

## ORDINANCE 3614

A City Council initiated ordinance amending Title 20, Missoula Municipal Code, the City Zoning Ordinance, to incorporate amendments in Chapter: 20.85 Review and Approval Procedures Section 20.85.085 entitled “Historic Preservation Permit (HPP)” amending subsections 20.85.085D, 20.85.085G and 20.85.085J

Be it ordained that Section 20.85.085.D; Section 20.85.085.G; Section 20.85.085.J be amended as follows:

### 20.85.085

#### D Application Filing

1. Parties seeking an HPP are strongly encouraged to schedule a pre-application meeting with the historic preservation officer to obtain guidance about the application process, unless otherwise expressly stated.
2. A completed HPP application shall be submitted to the historic preservation officer and shall include the following information:
  - a. Name, address and telephone number of applicant;
  - b. Address and legal description of the Historic resource;
  - c. Detailed description of the proposed work;
  - d. Photograph of each elevation for which an action subject to review is proposed, and photographs or drawings that clearly illustrate the nature and extent of the action proposed. Photographs and drawings shall be mounted and clearly annotated with the resource address and elevation (front, side, rear façade) and elevation direction (north, south, east, west);
  - e. A site plan, drawn to scale and oriented with North at the top of page, showing site boundaries, street and alley names and frontages and location of all structures; and
  - f. A statement demonstrating how the proposed work meets the review criteria and any applicable design guidelines.
3. The Historic Preservation Commission or historic preservation officer may request the following additional information:
  - a. Elevation drawings, plans, specifications to scale or other illustrations that will clearly express the proposed action subject to review;
  - b. Material samples;
  - c. Historical information, photographs, plans or other documentation that may be relevant to the proposed action subject to review; and
  - d. Other information necessary to enable the Historic Preservation Commissioners to visualize the proposed work.
4. The Historic Preservation Commission or historic preservation officer may require a new or amended application if there is a change in plans for actions subject to review. If a new or amended application is submitted, the review procedures provided for in this chapter shall apply in the same manner as if the application had been submitted for the first time.

## 20.85.085

### G Commission Action on Historic Preservation Permit Applications

1. Except for historic preservation officer reviewed alterations under Section 20.85.080.F.5, the Historic Preservation Commission shall review and decide on an Historic Preservation Permit (HPP) application at a scheduled public meeting. The Commission's decision shall occur within 60 [days](#) from the date the completed application was received. If the Historic Preservation Commission is unable to process the request within 60 [days](#) of receipt of the completed application, the Historic Preservation Commission may request an extension of time from the applicant. If an application is not processed within 60 [days](#) of submittal and no extension of time is requested or granted by the applicant then the Historic Preservation Permit (HPP) is approved. See section 20.85.085.J for timelines and procedures associated with permits for the demolition or relocation of historic resources.
2. For HPP applications that do not seek alternative compliance, the Historic Preservation Commission may approve, approve with conditions, or deny an HPP application as follows:
  - a. The Historic Preservation Commission shall approve an HPP application if it determines that the action subject to review meets the criteria for review and any applicable design guidelines.
  - b. The Historic Preservation Commission shall approve an HPP application with conditions if it determines that the action subject to review substantially meets the review criteria, and any applicable design guidelines, and that only minor modifications to the plans for the proposed action subject to review are required to bring it into compliance.
  - c. The Historic Preservation Commission shall deny an HPP application if it determines that the action subject to review does not meet the review criteria and any applicable design guidelines, and that more than minor modifications to the plans for the proposed action subject to review are required to bring it into compliance.
3. For HPP applications that seek alternative compliance, the Historic Preservation Commission may, in its discretion, approve, conditionally approve, or deny the application. Before approving or conditionally approving such an application, the Historic Preservation Commission must find that the exceptional practical difficulty to the applicant outweighs the need for strict adherence to this chapter.

## 20.85.085

### J Criteria and Procedure for Review of Relocation and Demolition of Historic Resources – Historic Demolition/Relocation Permit

#### 1. Intent

- a. The demolition or relocation of properties individually listed on the National Register of Historic Places are considered significant actions, as historic sites and structures are community resources and contributing elements to the character of Missoula. The removal of historic resources alters the established character of the neighborhoods of which they are a part. An application to demolish or relocate an historic resource is held to a very high standard, requiring submittal of comprehensive and detailed application materials.
- b. The purpose of this permit process is to evaluate and ensure that the applicant has considered reasonable and economically feasible alternatives to demolition or relocation, and sufficiently mitigate the effects of the potential removal of a historic resource.

- c. To obtain an historic demolition/relocation permit, herein after referred to as “permit,” the applicant must demonstrate that:
  - (1) Denying the application will cause unreasonable economic hardship to the viability of the property;
  - (2) That the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation, or adaptive reuse of the historic resource and;
  - (3) That conditions necessary to mitigate the effects of approved demolition/relocation are developed.
- d. This permit process also ensures that if a historic resource is removed, redevelopment of the site occurs in a way that mitigates the loss and enhances the many elements that are unique to the fabric, theme and character of each neighborhood and area within Missoula, and is sensitive to the significance of the site.

## **2. Applicability**

- a. Any property proposed for demolition or relocation which is individually listed on the National Register of Historic Places requires an historic demolition/relocation permit.
- b. Subsequent redevelopment requires a building permit and shall not include plans which leave the site without building(s) or structure(s), unless the existing character of the area does not include building(s) or structure(s).
- c. All other provisions apply within the Historic Preservation Permit section (20.85.085) including Notice.
- d. It is anticipated that every application will have a set of factual circumstances unique onto itself, and that proportionality of the type and scale of the proposed project will be considered during review. The Historic Preservation Commission and historic preservation officer acknowledge that requirements will vary from one context to another and should be assessed on an individual basis.

## **3. Definitions**

For the purposes of 20,85.085J the following definitions apply:

### **Bona Fide**

A diligent effort on behalf of the applicant resulting in substantive and collaborative dialogue between all parties involved regarding economic and public interest, and a willingness of the applicant to provide any information requested and as required.

### **Consultation**

The act or process of formally engaging in an active and meaningful discussion in order to seek information and advice. Depending on the circumstances, further consultation may be required on matters and issues that initial consultation may not have acknowledged.

### **Demolish, demolition, deconstruction**

The razing, destruction, or dismantling of an historic resource to the degree that its character defining features are substantially obliterated.

### **Economic Hardship**

That the structure has no viable economic life remaining. "No viable economic life" means the costs of repair/and or rehabilitation to bring the structure to an occupiable condition is unreasonable. Hardships may not be caused by the owner's neglect or intentional lack of appropriate maintenance (see 20.85.085.K), nor is the owner's desire to increase the property's economic return adequate grounds for relief.

**Evidence**

Requested and/or required information regarding the history of the site, economic hardship and feasible alternatives, and shall be weighed by the Historic Preservation Commission as to whether denying the application will cause unreasonable economic hardship to the viability of the property and whether reasonable alternatives exist.

**Relocation**

Moving an historic resource any distance from its original location and setting to a different location and setting.

**Unreasonable**

An amount of effort and difficulty that is oppressively burdensome, onerous and/or excessive.

**4. Application Overview**

- a. The applicant shall work with the historic preservation officer in creating and submitting a permit application which is accurate and sufficient for Historic Preservation Commission preliminary application review and historic preservation officer final review.
- b. Application sufficiency is determined based on review of accuracy and completeness of the application consistent with section 20.85.020.2 and 3.
- c. The review process for the permit application is developed in two stages:
  - (1) The first stage is preliminary application review and requires action by the Historic Preservation Commission during a public hearing. Action shall take place in the form of preliminary approval, preliminary approval with conditions, or denial of the permit. Submittal material for preliminary application review is described in section 20.85.085.J.10.
  - (2) If the permit is preliminarily approved or preliminarily approved with conditions in stage one, then the application proceeds to stage two. The second stage is final approval review and requires submittal of additional information including a redevelopment plan, and may consider advice from the Historic Preservation Commission. The historic preservation officer either finally approves or denies the permit. Submittal material for final approval review is described in section 20.85.085.J.11.
- d. The permit is not finalized and action on the permit cannot go forward until the final approval occurs during stage two.
- e. No demolition/relocation permit shall be issued unless a permit for subsequent redevelopment is issued simultaneously under section 20.85.085.J.
- f. An application filing fee is required for processing the permit application and is due at the time of preliminary application review submittal. The fee is established through Resolution and is non-refundable.

**5. Application Timeline**

- a. A complete and accurate application for the permit preliminary application review must be filed with the historic preservation officer in Development Services no sooner than 30 days after a pre-application meeting.
- b. Once the historic preservation officer has deemed the permit application sufficient for preliminary application review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit application for preliminary approval or denial.
- c. The Historic Preservation Commission may request an extension of time from the applicant. If the Historic Preservation Commission fails to reach a preliminary decision within the time frame specified herein, and if no time extension has been granted, the application will stand as preliminarily approved.
- d. The applicant has two years from the date of preliminary approval, or preliminary approval with conditions, to complete any preliminarily approved conditions and substantially comply with requirements for final approval (see 20.85.085.J11). If the applicant has not continued to pursue a demolition permit at the end of the two years, the application will be deemed denied by the historic preservation officer and the applicant may start the process again.
- e. If the permit is preliminarily approved, the historic preservation officer shall take no longer than 30 days to work with the applicant in establishing sufficient mitigation efforts for final application review, see 20.85.085.J11d for more information.
- f. The applicant may request an extension from the historic preservation officer if they are unable to complete requirements for final approval within the time frame specified herein, and if no time extension has been granted, the application will stand as denied.
- g. The following figure indicates the steps associated with each stage of application review:

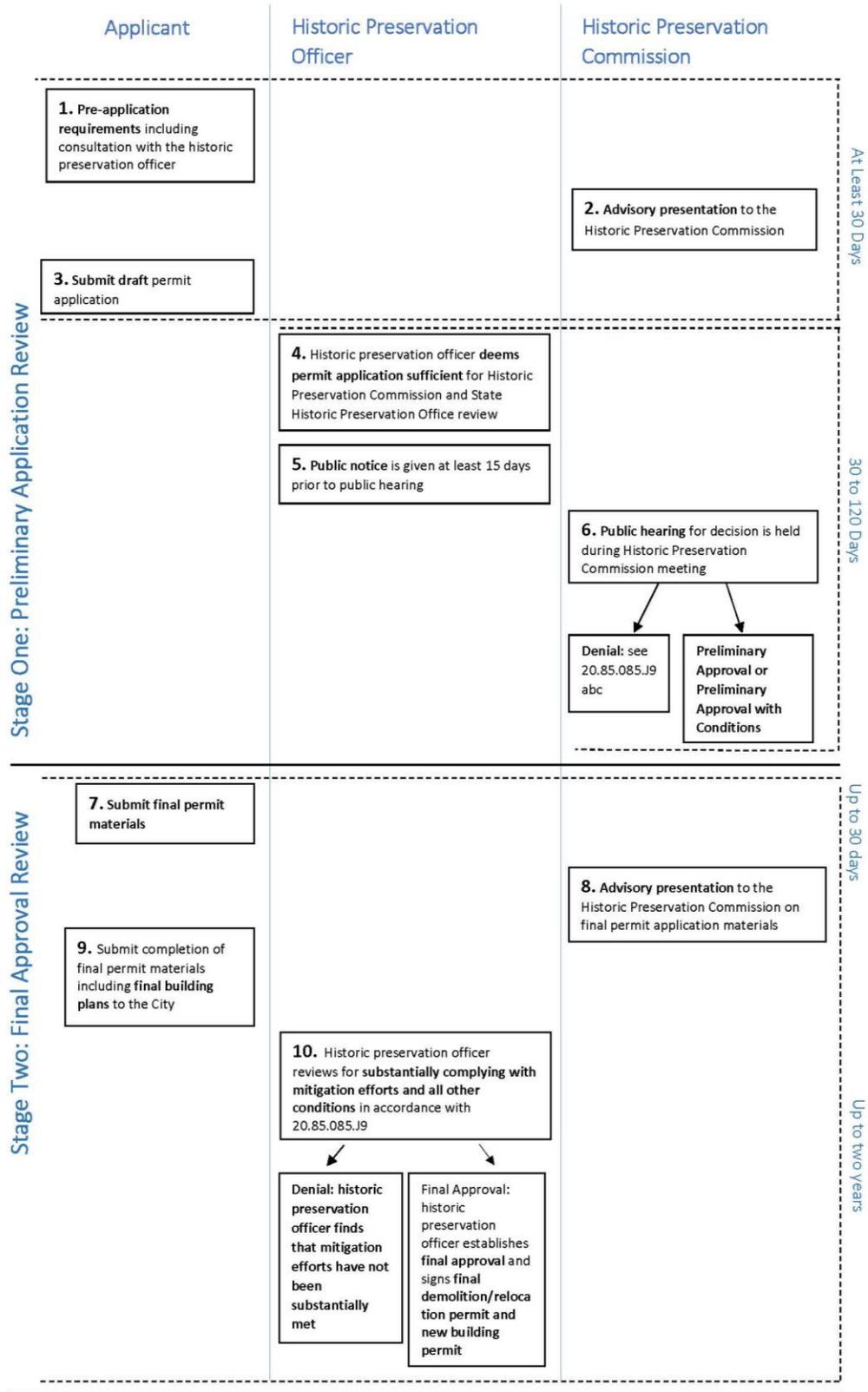


Figure 20.85.085-1 Application Timeline

## **6. Pre-Application Requirements**

- a. The intent of pre-application requirements is to initiate active mandatory consultation, review permit application materials, and outline the review process.
- b. At least 30 days prior to submitting a permit application, the applicant shall initiate consultation by scheduling a pre-application meeting with the historic preservation officer.
- c. After the pre-application meeting, the applicant shall provide an advisory presentation at an Historic Preservation Commission meeting, in order to gather information and consider comments on the permit proposal.
- d. After the pre-application meeting, the historic preservation officer may notify the State Historic Preservation Office that the process for a potential permit application has been initiated.

Commentary: If the applicant is not the building owner, such as an architect or consultant, it is strongly encouraged that the building owner be willing and available to work with the historic preservation officer and Historic Preservation Commission throughout the permit application process.

## **7. Historic Preservation Officer Review**

- a. The historic preservation officer shall meet with the applicant in a pre-application meeting to discuss the proposal, review permit application material, and outline the review process.
- b. The historic preservation officer shall review and deem the application sufficient in accordance with 20.85.085.D and F as applicable, and this section for preliminary application review (stage one). Once deemed sufficient, the historic preservation officer shall send a letter of sufficiency to the applicant.
- c. The historic preservation officer shall send a copy of the application to the State Historic Preservation Office, together with a cover letter requesting review and comment. The State Historic Preservation Office shall have 15 days from the receipt of the letter to provide comment.
- d. The historic preservation officer reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the submittal material accurately and sufficiently addresses the required application information, at no cost to the applicant.
- e. If a permit is preliminarily approved or preliminarily approved with conditions by the Historic Preservation Commission pursuant to 20.85.085.J8, the applicant shall submit application requirements for final approval to the historic preservation officer for review and to be deemed as sufficient (stage two, 20.85.085.J11).
- f. The historic preservation officer shall determine whether the conditions of preliminary approval and requirements of final approval have been substantially met.
- g. If the historic preservation officer finds substantial compliance with the intent of mitigating adverse effect, the historic preservation officer shall finally approve the permit for demolition/relocation and subsequent redevelopment (building permit).

- h. The historic preservation officer may consult with the Historic Preservation Commission Chair, the Director of Development Services and relevant city staff in reviewing final application materials and reaching a final decision.

### **8. Historic Preservation Commission Review**

- a. The Historic Preservation Commission shall review the permit application for preliminary application consideration (stage one). Once the historic preservation officer has deemed the permit application sufficient for preliminary application review, a period of no less than 30 days and no more than 120 days is initiated for the Historic Preservation Commission to reach a decision regarding the permit for preliminary application review.
- b. Upon fully reviewing the permit application, the Historic Preservation Commission shall hold a public hearing and may: grant preliminary approval, preliminary approval with conditions, or deny the permit. A denial of a permit shall be accompanied by a written statement of the specific reasons for the denial.
- c. Preliminary approval will be established during the public hearing if the Historic Preservation Commission finds that failure to issue a permit will result in unreasonable economic hardship to the viability of the property, and that a bona fide effort has been made to find reasonable alternatives that would result in the preservation, renovation, or adaptive reuse of the historic resource, and no reasonable alternatives exist.
- d. The Historic Preservation Commission should consider the evidence utilizing the following guiding questions: Is the evidence sufficient? Is the evidence relevant? Is the evidence competent? Is the evidence credible? Is the evidence consistent? The Historic Preservation Commission should also consider any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property under 20.85.085.K.
- e. The Historic Preservation Commission reserves the right to seek outside (third-party) consult from qualified professionals in western Montana, in determining whether the applicant has put forth a bona fide effort, whether reasonable alternatives have been proven, and in assessing economic feasibility based on the submitted evidence.

### **9. Review Criteria**

The following must be considered in reviewing and making decisions on demolition/relocation permit applications:

- a. Whether the structure still maintains viable economic life.
- b. Whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated.
- c. Whether the applicant has made a bona fide effort to find a reasonable alternative that would result in the preservation, renovation or rehabilitation of the structure.
- d. The historic preservation officer must consider whether sufficient mitigation efforts have been met, including but not limited to, documentation, mitigation, redevelopment and deconstruction (see 20.85.085.J11).
- e. For a proposed relocation, the Historic Preservation Commission and historic preservation officer shall consider setting, location, feeling, and association as it applies to its National Register nomination, whether the structure will maintain its historic significance and integrity having been relocated, and the economic and physical feasibility associated with relocating the structure.

## **10. Application Requirements for Preliminary Application Review**

After the completion of the pre-application requirements, the following application information must be submitted as evidence and considered to address the review criteria:

### **a. Certificate of Economic Hardship (CEH)**

The purpose of the CEH is to provide information as to whether the structure still maintains viable economic life. The burden of proof is on the applicant. The CEH must be submitted in written form and must include and examine the following as it relates to current economic and market rate data for Missoula, MT. Provisions:

- (1) The assessed value of the land, and improvements thereon, according to the most recent assessments;
- (2) Property taxes for the previous two years and any arrearages;
- (3) All appraisals obtained within the previous five years by the past and current owner or applicant in connection with the purchase, financing or ownership of the property;
- (4) Any listing of the property, price asked and offers received in the past five years;
- (5) Any environmental assessments or knowledge of environmental hazards associated with the property;
- (6) Any consideration by the owner for profitable adaptive reuses for the property, including renovation studies, structure and site plans, bids; and
- (7) Additional requirements for income-producing property:
  - (a) Annual gross income from the property for the previous five years;
  - (b) Itemized operating and maintenance expenses for the previous five years;
  - (c) Annual cash flow for the previous five years;
  - (d) Rent charged to tenants for the previous five years and the current market rate for rent;
  - (e) A comparative economic assessment for the utilization of all financial incentives currently available including but not limited to: potential Missoula Redevelopment Agency funding, Federal Historic Tax Credits, MT Historic Tax Abatement, New Market Tax Credits, historic preservation grants, and any other available funding.
- (8) Optional: Additional information such as the following may be helpful in satisfying the burden of proof and in clarifying whether an economic hardship is taking place:
  - (a) The date of purchase;
  - (b) If property was not purchased at or close to market value, an explanation of the circumstances of the purchase and/or sale;
  - (c) A detailed list with costs of any improvements since purchase and the date incurred;
  - (d) Annual debt service, if any, for the previous two years; and
  - (e) Title report and current balance on all mortgages, trust indentures, and on all debts that encumber the property

### **b. Feasibility Study/Economic Analysis Return**

The purpose of the feasibility study is to provide information as to whether the structure is capable of generating a reasonable economic return if preserved, restored or rehabilitated. The feasibility study must be completed by a third party not associated with the City of Missoula or the project in review, and must be completed by professionals from or experience in their field in western Montana. Provisions:

- (1) Written statement and itemized cost list from a licensed engineer and/or a licensed architect with experience in preservation, renovation, restoration, or rehabilitation as to the structural soundness of the structure and its suitability for continued use, renovation, restoration or rehabilitation.
- (2) Written statement and itemized cost list from a land-use professional which includes real estate consultants, appraisers, or other real estate professionals experienced in rehabilitation, as to the economic feasibility of preservation, restoration, renovation or rehabilitation of existing historic structures.

**c. Bona Fide Attempt to Rent, Sell or Relocate Resource**

The intent of listing the structure is to ensure that parties interested in saving the structure as opposed to demolishing it are alerted and offered a period of time to purchase the property. It is highly recommended that any individually listed property be listed on the National Trust for Historic Preservation online real estate page for the entire duration that the property is listed for sale. Provisions:

- (1) The applicant must advertise the historic resource for sale using a licensed real estate broker;
- (2) The applicant must illustrate that the asking price was comparable to the value of equivalent local structures of use and form during time of listing;
- (3) The applicant must list the property on a Multiple Listing Service (such as Loopnet.com) and the National Trust for Historic Preservation online real estate page for a period of at least 90 days within the past six months prior to submitting an application.

**d. Supplemental Information**

Any additional supplemental information considered necessary and requested by the Historic Preservation Commission and/or historic preservation officer to address review criteria.

**11. Application Requirements for Final Approval Review**

- a. The intent of application requirements for final approval review is to ensure that if a preliminary approval or preliminary approval with conditions for the permit has been established by the Historic Preservation Commission, then proper mitigation efforts are established and are consistent with Review Criteria.
- b. The applicant shall work with the historic preservation officer to ensure requirements are met and will establish a plan for each final approval requirement and compliance with any preliminarily approved conditions established by the Historic Preservation Commission.
- c. The applicant shall present the proposed mitigation efforts (including documentation, mitigation, deconstruction and redevelopment) for final approval review to the Historic Preservation Commission during an advisory presentation, and the Historic Preservation Commission may provide input as to recommendations of final approval, to be considered by the historic preservation officer.
- d. The following mitigation efforts must be submitted:

**(1) Documentation Plan**

All historic resources preliminarily approved for demolition or relocation must be fully documented using Historic American Building Survey (HABS) or HABS-quality procedure as defined in 20.30.030E.

- (a) Documentation shall happen before the final demolition/relocation permit is issued;
- (b) Documentation must be produced by a professional who satisfies professional qualification standards for history, archeology or architectural history, as established by the National Park Service and published in the Code of Federal Regulations, [36 CFR Part 61](#);
- (c) Documentation may be submitted as early in the process as the applicant desires to support the requested action.

## **(2) Mitigation Plan for Demolition or Relocation**

In addition to documentation, the applicant must provide a proposal to mitigate for adverse effect caused by demolition or relocation. Possible mitigation efforts include, but are not limited to, designated interpretive space, brick and mortar projects, National Register nomination updates and additions, a preservation plan utilizing the Secretary of the Interior's Standards, a development agreement with the City, an archeological study among others. Should the applicant be applying for a relocation permit, additional preservation planning documents could apply which may include plans for stabilization and/or restoration.

## **(3) Redevelopment Plan**

The applicant shall consult with the historic preservation officer in creating appropriate redevelopment plans for the site and may consider advice from the Historic Preservation Commission.

- (a) Redevelopment should be compatible with the character of the surrounding neighborhood, reflect the historic resource to be demolished or relocated, is sensitive to the significance of the site, and must adhere to any applicable design overlays within the City of Missoula.
- (b) Redevelopment plans shall be oriented with a north arrow at the top of the page and shall include exterior elevations, materials, site boundaries, street and alley frontages with names, location of all structures with distances to the nearest foot between buildings and from buildings to property lines, and must conform to all applicable regulations.
- (c) The applicant must demonstrate the ability to complete the project. The City Building Official may require a bond, letter of credit or cash deposit as a demonstration that the financial backing for the replacement structure is adequate to complete the project.

## **(4) Deconstruction Plan**

All historic structures approved for demolition must be deconstructed in total rather than demolished, with deconstructed items to be reused. Property owners are held responsible for all costs associated with deconstruction.

- (a) The applicant shall ensure that a local deconstruction specialist is consulted on the deconstruction process, for purposes of identifying opportunities for recovering and reusing materials within the structure.
- (b) Prior to the onset of deconstruction, the applicant and the deconstruction contractor shall meet with the historic preservation officer to identify

historic features and items within the structure that are important to retain for potential reuse in the new structure or for preservation or interpretive purposes.

- (c) The applicant shall submit a deconstruction plan summarizing timing and approach including a preliminary list of identified historic items, and must be approved by the historic preservation officer. The applicant shall present plans to the Historic Preservation Commission during an advisory presentation.
- (d) The deconstruction specialist shall use their best effort to recover as many historic or non-historic features and items as is feasible, taking into consideration the age and condition of the materials, the safety of workers engaged in the deconstruction efforts, environmental abatement needs, and other conditions of the structure and worksite.

**(5) Supplemental Information**

Any additional supplemental information considered necessary and requested by the historic preservation officer to address conditions of mitigation.

**12. Exceptions**

The historic preservation officer may waive items listed in 20.85.085.J if they are not applicable to the specific review requested by the ordinance. In the event that any of the required information is not reasonably available to the applicant and cannot be obtained, the applicant shall file with the permit application a statement of the information which cannot be obtained and shall describe the reasons why such information cannot be obtained. The historic preservation officer shall deem whether the reasons are sufficient or not.

### 13. Permit Application Checklist

<p><b>Historic Demolition/Relocation Permit Checklist for Required Material</b></p> <p><b>Stage One - Preliminary Permit Application Review Requirements:</b></p> <p><input type="checkbox"/> Certificate of Economic Hardship (CEH)</p> <p><input type="checkbox"/> Feasibility Study</p> <p><input type="checkbox"/> Record of Bona Fide Attempt to Rent, Sell or Relocate Property</p> <p><input type="checkbox"/> Any Additional Supplemental Information Requested or Considered Necessary</p> <p><b>Stage Two - Final Permit Approval Review Requirements:</b></p> <p><input type="checkbox"/> HABS-Quality Documentation Plan of the Historic Resource</p> <p><input type="checkbox"/> Mitigation Plan for Adverse Effect</p> <p><input type="checkbox"/> Redevelopment Plan and Economic Proof</p> <p><input type="checkbox"/> Deconstruction Plan</p> <p><input type="checkbox"/> Any Additional Supplemental Information Requested or Considered Necessary</p>
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**Figure 20.85.085-2 Checklist for Required Permit Application Material**

**Effective date.** The provisions of this ordinance shall be effective in 30 days after adoption.

**Severability.** If any selection, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase and words thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or words have been declared invalid or unconstitutional, then the remaining ordinance provisions will be in full force and effect.

First reading and preliminary adoption on the 25th day of June, 2018 by a vote of 10 ayes, Stacie M. Anderson, Julie Armstrong, Mirtha Becerra, Michelle Cares, John DiBari, Heather Harp, Gwen Jones, Julie Merritt, Jesse L. Ramos, Bryan von Lossberg; 0 nays; 0 abstentions; and 2 absent, Jordan Hess, Heidi West.

Second and final reading and adoption on the 23rd day of July, 2018 by a vote of 12 ayes, Stacie M. Anderson, Julie Armstrong, Mirtha Becerra, Michelle Cares, John DiBari, Heather Harp, Jordan Hess, Gwen Jones, Julie Merritt, Jesse L. Ramos, Bryan von Lossberg, Heidi West; 0 nays; 0 abstentions; and 0 absent.

ATTEST:

/s/ Martha L. Rehbein

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Martha L. Rehbein  
City Clerk

APPROVED:

/s/ John Engen

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John Engen  
Mayor

(SEAL)